



Journey of Right To Education: A Historical perspective

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Abstract

On 26th January 1950 when Indian Constitution was reinforced, it had in its Article 45 a directive principle promising free and compulsory education for all children until they complete the age of 14 years. This was to be attained within 10 years. But the state that was responsible for implementing the constitutional promise of free and compulsory education for all children up to the age of 14 years could not do so for next 5 decades. In the 60th year of India became Republic, on the 27th day of August 2009, Right of children to free and compulsory education act 2009 was notified. Through 86th constitutional amendment, Article 21-a (part III) was inserted in the fundamental right section of constitution under which, "The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine. The path to the most sought 'Right to Education' was not as simple and easy. For understanding it in a better way, we will have to dwell into the history of Indian Education. The present paper tries to look at the historical perspective of journey of 'Right to Education' in Indian scenario.

Key words: *Right to Education, Historical perspective*

Introduction:

On 26th January 1950 when Indian Constitution was reinforced, it had in its Article 45 a directive principle promising free and compulsory education for all children until they complete the age of 14 years. This was to be attained within 10 years. But the state that was responsible for implementing the constitutional promise of free and compulsory education for all children up to the age of 14 years could not do so for next 5 decades. In the

60th year of India became Republic, on the 27th day of August 2009, Right of children to free and compulsory education act 2009 was notified. Through 86th constitutional amendment, Article 21-a (part III) was inserted in the fundamental right section of constitution under which, “The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine.

The path to the most sought ‘Right to Education’ was not as simple and easy. For understanding it in a better way, we will have to dwell into the history of Indian Education. During the Vedic period Education was the sole privilege of the priestly class (Brahmins) primarily. Because of the religious basis for the content of education, coupled with the elitist medium of instruction that was chose to impart the knowledge, people from lower castes, and so called ‘shudras’ (Untouchables), in particular, were barred from receiving education. Buddhism and Jainism overthrew the dominance of classical Vedic Education by the end of the eighth century AD, freeing education beyond the confines of hermitages. But still the education was not in the reach of common people. The Muslim rulers of the Indian sub-continent also did not consider education as a function of the state. It was perceived as a branch of religion and therefore entrusted to learned theologians called ‘Ulemas’. Therefore, in ancient and medieval India, education was interlocked with religion and was clearly not accessible to all persons. During the Colonial period, development of modern education system in the Indian subcontinent was reported. Although many scholars have remarked the British policy of introducing modern education as not a spontaneous benevolent act but were facilitated with a view to serving their vested interest, i.e. to train Indians as clerk, managers and other subordinate workers to staff their vast politico-administrative machinery. However, education of the Indian masses was largely neglected and by the beginning of nineteenth century, it was in shambles. In the early nineteenth century, Campbell, the then District collector of Bellary reported about the situation of education in his district that “it cannot have escaped the government that of nearly a million of souls in this district, not 7000 are now at school ... In many villages where formerly there were schools, there are now none.’ In 1856 AD a missionary stated that in India, a school, either government or missionary is as rare as a light house on our coast... three or four schools existing among three or four million of people. The neglect of education by the British was acknowledged by the Wood’s Despatch. In the evidence placed before the Hunter Commission appointed in 1882, DadaBhai Naoroji and Jyotiba Phule from Bombay demanded state sponsored free education

for at least four years. This demand was indirectly acknowledged in the commission's recommendations on primary education. The Commission recommended that schools should be open to all castes and classes. In the first decade of 20th century Sir Chimanlal Shitalwad and Sir Ibrahim Rahimatulla demanded strongly from the provincial government to compulsory education in the Bombay city. In order to pacify them an advisory committee on this issue was appointed in 1906. The committee declared forcefully that it was rather before time and hence impossible to start compulsory education in Bombay. On the contrary, Maharaja Sayaji Rao Gaekwad made this impossible thing possible by initiating compulsory Primary Education in 9 villages of Amroli district in his State of Baroda as a pre-test on in the year 1893 AD. After getting positive results, State of Baroda was first to introduce law on Compulsory Education in 1906. This law provided for compulsory education for boys and girls in the age groups of 7 to 12 years and 7-10 years respectively. The first documented use of the word right in the context of elementary education appears in a letter written by Rabindra Nath Tagore to the International league for the Rational Education of Children in 1908AD. In 1911 AD, Gopal Krishna Gokhale moved a bill for compulsory education in the Imperial legislative council, albeit unsuccessfully. The Legislative council of Bombay was the first amongst the provinces to adopt a law on compulsory education. Gradually, other provinces followed suit as control over elementary education was transferred to Indian Ministers under the Government of India Act, 1919.

The pace of this nationwide movement of compulsory elementary education slowed down or rather obstructed during the period between 1931 and 1937 AD. There were basically two reasons behind the event. First, the period of 1931-1937 was the period of worldwide economic depression and India was also directly affected. Secondly Hartog Committee (1929) suggested qualitative growth rather than quantitative growth of primary education. Secondly, hence the establishment of new primary schools were restricted.

In 1937 AD, at the All India National Conference on education held at Wardha, Gandhiji advocated the idea of self supporting 'Basic Education' for a period of seven years through vocational and manual training. This concept of self support was floated in order to counter the Government's constant excuse of lack of resources. The plan was to not only educate children through vocational training/ manual training by choosing a particular handicraft, but also to simultaneously use the income generated from the sale of such handicrafts to partly finance basic education. The next landmark development in the history

of free and compulsory education in India was the post war plan of education development of 1944, also called the Sargent Plan, which recommended free and compulsory education for eight years (6-14 years age group).

After independence the Indian Constitution recognised the need of free and compulsory education. Article 29 and 30 of the Indian constitution provide citizens the Educational and Cultural Rights. Similarly, Directives of state policy emphasized on intellectual development of the Citizens. Article 45 states that the state shall endeavour to provide free and compulsory primary education to the children of 6-14 age group by 1960 AD. But due to resource crunch we have not been able to make this dream a reality for many further decades.

The period spanning between 1950 to the judgement in Unnikrishnan's case in 1993 saw several developments. The Indian Education Commission (Kothari Commission) 1964-66, reviewed the status of education in India and made recommendations. Most important amongst them was the recommendation of a Common School System with a view to eliminate inequality in access to education. National Policy on Education, 1968 was the first document evidencing Indian Government's Commitment towards elementary education. The policy dealt with issue of equalisation of educational opportunity and required the common school system to be adopted in order to promote social cohesion.

In 1975, during the Emergency, the central government put the responsibility of primary education on centre as well as state by putting primary education under 'Concurrent List' in an amendment (the 42nd) to the constitution. The school reformer Prime Minister Rajiv Gandhi, himself, decided in a military vocabulary to launch "Operation Blackboard" in 1986. Operation Blackboard was a centrally sponsored scheme, in which centre and state share responsibility for joint implementation. It was simultaneously a normative and remedial programme: it was to ensure that in future all standard 1- 4/5 (lower) primary schools adhered to the newly defined 'minimum essential' level of facilities; and it was to bring all existing schools up to that level. The Operation Blackboard package consisted of three independent components of two rooms, two teachers and a set of teaching-learning aid. But the operation failed immensely in finance, logistics and overall implementation.

National policy on Education 1986, while reaffirming the goal of universalisation of elementary education, did not recognise the 'Right to Education'. The 1986 policy is also severely criticised for having introduced non-formal education in India. The 1986 policy was

reviewed by the Acharya Rammurti Committee in 1990, and thus review process contributed to the revised National Policy on Education of 1992. The Acharya Rammurti committee recommended that the right to education should be included as a fundamental right in part III of the constitution. However, this recommendation was not implemented immediately.

A great legal breakthrough was achieved in 1992 when the supreme court of India held in *Mohini Jain Vs. State of Karnataka* that the 'Right to Education' is concomitant to fundamental rights enshrined under part III of the constitution and that every citizen has a Right to education under the constitution. The Supreme Court reconsidered the above mentioned judgement in the case of *Unnikrishnan, J P vs state of Andhra Pradesh*. The court (majority judgement) held that, though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21 and must be construed in the light of the Directive principles of the constitution. So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the "State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want". Article 45 says that "the State shall endeavor to provide, within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years". Article 46 commands that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.....". The three Articles 45, 46 and 41 are designed to achieve the said goal among others. Thus, right to education, understood in the context of Article 45 and 41 means: (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the state and its development.

In the meanwhile major policy level changes were made under the dictates of the IMF-World Bank Structural adjustment Programme and the World Bank funded District Primary Education Programme (DPEP) was introduced in 1994. Under DPEP, the national commitment towards free and compulsory education up to 14 years was reduced and primary

education for the first five years was introduced. Further, the concept of multigrade teaching and Para teachers were also used.

In order to enforce the Unnikrishnan judgement and acquire admission into schools, several public interest litigation petitions were filed in different High courts. This created tremendous pressure on the parliament and thereafter a proposal for a constitutional amendment to include the right to education as a fundamental right was made in 1996. Accordingly, the constitution (83) Amendment Bill was introduced in the Rajya Sabha in July 1997. The 83rd Amendment proposed that Article 21-A be introduced (fundamental right to education for 6-14 years), former Article 45 be deleted (the then existing directive principle on free and compulsory education) and Article 51-A (k) (fundamental duty on parents) be introduced. Between 1997 and 2001, due to change in governments, the political will that was required to bring about the amendment was absent. In November 2001 however, the bill was re-numbered as the 93rd Bill and 83rd Bill was withdrawn. The 93rd Bill proposed that former Article 45 be amended to provide for early childhood care and education instead of being deleted altogether. This Bill was passed in 2002 as the 86th Constitutional Amendment Act. Free and compulsory elementary education was made a fundamental right under Article 21 of the Constitution in December 2002, by the 86th Amendment and in translating this into action; the 'Right of Children to Free and Compulsory Education Bill' was drafted in 2005. This was revised and became an Act in August 2009, but was not notified for roughly 7 months.

The reasons for delay in notification can be mostly attributed to unresolved financial negotiations between the National University of Education Planning and Administration, NUEPA, which has been responsible for estimating RTE funds and the Planning Commission and Ministry of Human Resource and Development (MHRD). From an estimate of an additional Rs.3.2 trillion to Rs.4.4 trillion for the implementation of RTE Draft Bill 2005 over 6 years (Central Advisory Board of Education, CABE) the figure finally set by NUEPA now stands at a much reduced Rs.1.7 trillion over the coming 5 years. For a frame of reference, Rs.1 trillion is 1.8% of one year's GDP.

Most education experts agree that this amount will be insufficient. Since education falls under the concurrent list of the Constitution, financial negotiations were also undertaken between Central and State authorities to agree on sharing of expenses. This has been agreed at 35:65 between States and Centre, though state governments continue to argue that their

share should be lower.

The 'Right of Children to Free and Compulsory Education Act 2009' (RTE Act) came into 1st of April, 2010, with much fanfare and an address by Prime Minister Manmohan Singh. And now, under Article 21-A of the Constitution, every child between the ages of 6-14 has a fundamental right to education, which the state shall provide 'in such manner as the state may, by law, determine'. Early childhood care and education (for children in the age group of 0-6 years) is provided as a directive principle of state policy under Article 45 of the Constitution. The RTE Act is a detailed and comprehensive piece of legislation which includes provisions related to schools, teachers, curriculum, evaluation, access and specific division of duties and responsibilities of different stakeholders. Key features of the Act include:

1. Every child from 6 to 14 years of age has a right to free and compulsory education in a neighbourhood school till completion of elementary education.
2. Private schools must take in a quarter of their class strength from 'weaker sections and disadvantaged groups', sponsored by the government.
3. All schools except private unaided schools are to be managed by School Management Committees with 75 per cent parents and guardians as members.
4. All schools except government schools are required to be recognized by meeting specified norms and standards within 3 years to avoid closure.

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